

Scheme of work: Tort

This scheme of work suggests how to deliver the Tort section of our AS and A-level Law specifications (7161, 7162).

3.3 Tort

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| Week | Topic and content skills | Activities and resources | Notes |
| 1 | Negligence – injury and damage to property:* the ‘neighbour’ principle and the Caparo three-part test
* theory of tort law – public policy factors governing the imposition of a duty of care.
 | * Identify the tests for imposing a duty of care.
* Explain the three stages of the Caparo test.
* Analyse public policy factors involved in imposing a duty of care.
* Get students to watch this [lecture on the duty of care](https://www.youtube.com/watch?v=v1b3AoDkbLg).
 | * Consider the question of what activities might be discouraged by the imposition of a duty of care (sporting events or theatre productions).
* Think of everyday examples of when a duty of care exists.

(AS does not require a consideration of the theory of tort law) |
| 2 | Negligence – injury and damage to property:* breach of duty – the objective standard of care
* theory of tort law – factors governing the objective standard of care.
 | * Explain the nature of the objective standard of care.
* Identify risk factors governing the behaviour of the reasonable person.
* Analyse the factors setting the standard of care.
 | * Be careful to note what the objective standard means when judging the behaviour of the defendant.
* Draw up a table of the different factors governing breach and illustrate each with case examples and real life examples.

(AS does not require a consideration of the theory of tort law) |
| 3 | Negligence – injury and damage to property:* causation in fact
* causation in law (remoteness of damage).
 | * Identify the test for causation in fact.
* Explain and illustrate the test for causation in law.
* Create a Pictionary game, using images found online to test students’ case knowledge. Include answer sheet at the end.
* Complete [Duty, breach and damage re-cap](#Dutybreachanddamagerecap).
 | * Consider scenarios where damage need not be wholly reasonably foreseeable.
* Construct a step-by-step framework for answering negligence problems and practise applying it to past papers.
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| 4 | Defences to an action in negligence:* contributory negligence
* consent (*volenti non fit injuria*).
 | * Identify the requirements for each defence.
* Explain the consequences for the parties if a defence is successful.
 | * Note that contributory negligence exists when a claimant either contributes to the cause of an accident or the level of his injuries.
* Even if a defence is clearly relevant to a scenario problem, be careful to establish the primary liability first: a defence cannot exist by itself; it must be a defence to something.
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| 5 | Remedies available in an action for negligence:* compensatory damages for personal injury, damage to property and economic loss
* principle of mitigation of loss.
 | * Identify the principles governing compensatory damages.
* Explain and illustrate the principle of mitigation.
 | * Establish the difference between special and general damages.
* Have a look at some past exam questions and try to identify what damages a court might award.

(AS does not require a consideration of economic loss) |
| 6 | Negligence – psychiatric injury:* liability for psychiatric injury sustained by primary and secondary victims
* theory of tort law – policy factors governing the imposition of liability for psychiatric injury.
 | * Describe a primary and a secondary victim. The Hillsborough litigation may be an engaging example.
* Identify the elements necessary in each case to establish liability.
* Analyse policy reasons governing the extent of recovery for psychiatric injury.
 | * Given the advances in psychiatric medicine, discuss whether there is still a need for the rules on psychiatric injury to remain as restrictive as they are.
* Note that a claimant must still establish breach of duty and causation and that the defendant may have a defence.
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| 7 | Negligence – economic loss:* liability for economic loss caused by negligent acts and negligent misstatements
* theory of tort law – policy factors governing the imposition of liability for economic loss.
 | * Explain the difference between negligent acts and negligent misstatements.
* Identify the requirements necessary to establish liability for economic loss.
* Analyse policy reasons governing the extent of recovery for economic loss.
 | * Discuss the extent to which ‘floodgates’ plays a role in limiting liability; for instance, by looking at a newspaper financial column giving advice on pensions or shares.
* Note that a claimant must still establish breach of duty and causation and that the defendant may have a defence.
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| 8 | Occupiers’ Liability Act 1957 – liability in respect of visitors. | * Define a lawful visitor.
* Explain the nature of the duty owed to a lawful visitor and when that duty is breached.
* Research the case of:

Furmedge v Chester-le-street District Council [2011] and watch the following [dreamspace accident scene video](https://www.youtube.com/watch?v=D-GxXBF56qc). What does it tell us about an occupier? | * Give examples from ordinary life where members of the public are protected by the OLA 1957.
* Note the contents of any warning sign: is the sign excluding liability or discharging the duty?

(AS requires a focus on s 2(1)–(3) OLA 1957 but excludes defences)For the Furmedge case, students should get the principle here that the company (BIL) that erected the inflatable structure was an occupier for a number of reasons: *inter alia*, its employees acted as stewards inside and outside the structure. They played a part in the control of who went into the structure and how they behaved whilst inside and accordingly had some degree of physical control over the premises. |
| 9 | Occupiers’ Liability Act 1984 – liability in respect of trespassers. | * Define a trespasser.
* Explain the nature of the duty owed to a trespasser and when that duty is breached.
 | * Using the case law, consider the treatment of children in terms of whether they are trespassers at all, whether they are owed a duty under the OLA 1984 and when an occupier might have breached that duty.
* Note that the duty set out in OLA 1984 is not automatic; the claimant must establish that a duty is owed before the question of breach can be discussed.

(AS requires a focus on s 1(1)–(3) OLA 1984 but excludes defences) |
| 10 | Private nuisance:* parties to an action for negligence
* factors governing an unlawful interference.
 | * Identify the rules governing claimants and defendants.
* Examine the factors governing an unlawful interference.
 | * The standard in nuisance is variable – what is lawful in one circumstance may be unlawful in another.
* Look at some past exam questions and identify from the facts of the scenarios, how and why nuisance might be present.
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| 11 | Private nuisance:* defences to an action for nuisance
* remedies of damages and injunctions
* theory of tort law – factors governing the grant of an injunction.
 | * Identify and illustrate the defences to an action in nuisance.
* Examine when the remedies of damages and an injunction may be available.
 | * Think of examples, perhaps drawn from local media, of everyday activities which may amount to a nuisance.
* Link with material on the legal system’s role in balancing conflicting interests.
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| 12 | The rule in Rylands v Fletcher:* elements required to establish liability
* defences and remedies available.
 | * Identify the elements required to establish liability under the ‘rule’.
* Explain the defences and remedies.
* Watch this [lecture on Rylands v Fletcher liability](https://www.youtube.com/watch?v=DYBQ2Ys-jYs).
 | * Consider the extent to which this has any practical application today.
* Is the ‘rule’ likely to be relevant to issues such as ‘fracking’ or the storage of nuclear waste from power stations?
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| 13 | Vicarious liability:* an employer’s liability for the actions of an employee during the course of employment
* other areas of vicarious liability
* theory of tort law – nature and purpose of vicarious liability.
 | * Identify the tests as to when a worker is an employee.
* Explain when an employee is acting in the course of employment.
* Identify other relationships where vicarious liability may exist.
* Analyse the policy reasons for imposing a strict liability on an employer.
* Look at this [article on the liability of a school](http://www.bbc.co.uk/news/uk-england-humber-20424136) and see how you can apply it to vicarious liability.
* Look at this [Supreme Court Judgement](https://www.youtube.com/watch?v=2BXhXHr0w0c)  of Cox v MoJ 2016.
 | * Draw up a table of relationships which are similar to employment relationships and which might attract vicarious liability (eg liability of a prison for negligence by a prisoner during a work activity).
* It is unlikely that an examiner can expect too much detail on the tests as to who is an employee, as this is a tort law paper and not an employment law paper.
* The importance of this judgement is that it provides a basis for identifying the circumstances in which vicarious liability may be imposed outside relationships of employment.
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Suggested activity: Duty, breach and damage re-cap

* Consolidate student understanding with the following questions:
	+ what is the neighbour principle?
	+ in which case was it established and by whom?
* What three tests were established for duty of care? Make reference to the case.
* What is the reasonable man test and from which case is it derived?
* What are the risk factors included in breach of duty?
* What is meant by *res ipsa loquitur* and what are the three tests needed to see if it applies?
* Explain what is meant by factual causation and remoteness of damage.
* Create a case test for students, using images as prompts. For example, for Nettleship v Western, images of nettles and a learner driver plate could be shown to students, as a prompt for them to list case name, salient facts and *ratio decidendi*. Find image prompts for the following cases:
	+ Topp v London Country Bus
	+ Nettleship v Western
	+ Watson v BBBC
	+ Hill v Chief Constable of South West Yorkshire Police
	+ Bolton v Stone
	+ Paris v Stepney
	+ Whitehouse v Jordan
	+ Barnett v Chelsea and Kensington
	+ Smith v Leech Brain.